

**§ 1780.81**

**12 CFR Ch. XVII (1–1–02 Edition)**

U.S. Code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1) .....	First tier .....	5,500
12 U.S.C. 4636(b)(2) .....	Second tier (Executive Officer or Director) .....	11,000
12 U.S.C. 4636(b)(2) .....	Second Tier (Enterprise) .....	27,500
12 U.S.C. 4636(b)(3) .....	Second Tier (Executive Officer or Director) .....	110,000
12 U.S.C. 4636(b)(3) .....	Second Tier (Enterprise) .....	1,150,000

**§ 1780.81 Applicability.**

The inflation adjustments in §1780.80 apply to civil money penalties assessed

in accordance with the provisions of 12 U.S.C. 4636 for violations occurring after January 4, 2001.

CHAPTER XVIII—COMMUNITY DEVELOPMENT  
FINANCIAL INSTITUTIONS FUND, DEPARTMENT  
OF THE TREASURY

---

<i>Part</i>		<i>Page</i>
1805	Community Development Financial Institutions Program .....	1153
1806	Bank Enterprise Award Program .....	1172
1815	Environmental quality .....	1182



## **PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM**

### **Subpart A—General Provisions**

Sec.

- 1805.100 Purpose.
- 1805.101 Summary.
- 1805.102 Relationship to other Fund programs.
- 1805.103 Awardee not instrumentality.
- 1805.104 Definitions.
- 1805.105 Waiver authority.
- 1805.106 OMB control number.

### **Subpart B—Eligibility**

- 1805.200 Applicant eligibility.
- 1805.201 Certification as a Community Development Financial Institution.

### **Subpart C—Use of Funds/Eligible Activities**

- 1805.300 Purposes of financial assistance.
- 1805.301 Eligible activities.
- 1805.302 Restrictions on use of assistance.
- 1805.303 Technical assistance.

### **Subpart D—Investment Instruments**

- 1805.400 Investment instruments—general.
- 1805.401 Forms of investment instruments.
- 1805.402 Assistance limits.
- 1805.403 Authority to sell.

### **Subpart E—Matching Funds Requirements**

- 1805.500 Matching funds—general.
- 1805.501 Comparability of form and value.
- 1805.502 Severe constraints waiver.
- 1805.503 Time frame for raising match.
- 1805.504 Retained earnings.

### **Subpart F—Applications for Assistance**

- 1805.600 Notice of Funds Availability.
- 1805.601 Application contents.

### **Subpart G—Evaluation and Selection of Applications**

- 1805.700 Evaluation and selection—general.
- 1805.701 Evaluation of applications.

### **Subpart H—Terms and Conditions of Assistance**

- 1805.800 Safety and soundness.
- 1805.801 Assistance Agreement; sanctions.
- 1805.802 Disbursement of funds.
- 1805.803 Data collection and reporting.
- 1805.804 Information.
- 1805.805 Compliance with government requirements.
- 1805.806 Conflict of interest requirements.
- 1805.807 Lobbying restrictions.

- 1805.808 Criminal provisions.
- 1805.809 Fund deemed not to control.
- 1805.810 Limitation on liability.
- 1805.811 Fraud, waste and abuse.

AUTHORITY: 12 U.S.C. 4703, 4703 note, 4717; and 31 U.S.C. 321.

SOURCE: 65 FR 49645, Aug. 14, 2000, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 1805.100 Purpose.**

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

#### **§ 1805.101 Summary.**

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a competitive application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

#### **§ 1805.102 Relationship to other Fund programs.**

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the

same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a Bank Enterprise Award Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

**§ 1805.103 Awardee not instrumentality.**

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

**§ 1805.104 Definitions.**

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 et seq.);

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements described in § 1805.200;

(h) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(i) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(j) *Community Facility* means a facility where health care, childcare, educational, cultural, or social services are provided;

(k) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(l) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(m) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.);

(n) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, Equity Investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(o) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described under § 1805.601(d);

(p) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(q) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Equity Investment* means an investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), or any other investment deemed to be an Equity Investment by the Fund;

(s) *Financial Products* means loans, Equity Investments and, in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in insured credit union CDFIs and/or emerging insured credit union CDFIs;

(t) *Financial Services* means checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, and safe deposit box services;

(u) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(v) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(w) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(x) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(y) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(z) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(aa) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(bb) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(cc) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

## § 1805.105

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(dd) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(ee) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in §1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(ff) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(gg) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in §1805.200(b)(4);

(hh) *Targeted Population* means individuals or an identifiable group meeting the requirements of §1805.201(b)(3); and

(ii) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

### § 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the FEDERAL REGISTER.

### § 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management

## 12 CFR Ch. XVIII (1–1–02 Edition)

and Budget and assigned OMB control number 1505–0154.

### Subpart B—Eligibility

#### § 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in §1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in §1805.201(b) and paragraph (b) of this section within 24 months from September 30 of the calendar year in which the applicable application deadline falls or such other period as may be set forth in an applicable NOFA. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and §1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

**§ 1805.201 Certification as a Community Development Financial Institution.**

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in paragraph (b) of this section. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b) or (a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) and § 1805.200 by providing the information requested in paragraphs (b)(1) through (b)(7) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant individually and the Applicant and its Affiliates, when viewed collectively (as a whole), are purposefully directed toward improving the social and/or eco-

nomic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of distressed communities (which may include Investment Areas).

(2) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(ii) An Applicant described under:

(A) Paragraph (b)(2)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(2)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(2)(i)(C) of this section shall submit a copy of its most recent year-end financial statements (and any notes or other supplemental information to its financial statements) documenting its assets dedicated to Financial Products, Development Services and/or other similar financing, and an explanation of how such assets support these activities. An Applicant also shall provide qualitative and quantitative information on the percentage of Applicant staff time dedicated to the provision of Financial Products, Development Services, and/or other similar financing.

(3) *Target Market*—(i) *General.* An Applicant shall provide a description of



one or more Investment Areas and/or Targeted Populations that it serves, and shall demonstrate that its total activities are principally directed to serving the Investment Areas, Targeted Populations, or both. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

(ii) *Investment Area.* (A) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(1) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands); and either

(2) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or

(3) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (b)(3)(ii)(B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(3) The unemployment rate is at least 1.5 times the national average;

(4) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(5) In areas located outside of a Metropolitan Area:

(i) The county population loss in the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(ii) The county net migration loss (outmigration minus immigration) over the five year period preceding the most recent decennial census is at least 5 percent.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans, Equity Investments, or Financial Services within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents. To demonstrate that it is serving an Investment Area, an Applicant shall submit:

(1) A completed Investment Area Designation worksheet referenced in the application packet;

(2) A map of the designated area(s); and

(3) Studies or other analyses as described in paragraph (b)(3)(ii)(E) of this section.

(iii) *Targeted Population*—(A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to loans, Equity Investments, or Financial Services in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members. To demonstrate that it is serving a Targeted Population, an Applicant shall submit:

(1) In the case of a Low-Income Targeted Population, a description of the service area from which the Low-Income Targeted Population is drawn (which could be, for example, a local, regional or national service area); or

(2) In the case of a Targeted Population defined other than on the basis of Low-Income—

(i) A description of the service area from which the Targeted Population is drawn; and

(ii) A brief analytical narrative with information demonstrating that the identifiable group of individuals in the Applicant's service area, lacks adequate access to loans, Equity Investments, or Financial Services.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products. An Applicant shall submit a description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise. An Applicant shall describe how it has and will maintain accountability to the residents of the Investment Area(s) or Targeted Population(s) it serves.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities. An Applicant shall submit copies of its articles of incorporation (or comparable organizing documents), charter, bylaws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(7) *Ownership.* An Applicant shall submit information indicating the portion of shares of all classes of voting stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

**Subpart C—Use of Funds/Eligible Activities**

**§ 1805.300 Purposes of financial assistance.**

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

**§ 1805.301 Eligible activities.**

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting:

- (a) Commercial facilities that promote revitalization, community stability or job creation or retention;
- (b) Businesses that:
  - (1) Provide jobs for Low-Income persons;
  - (2) Are owned by Low-Income persons; or
  - (3) Enhance the availability of products and services to Low-Income persons;
- (c) Community Facilities;
- (d) The provision of Financial Services;
- (e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:
  - (1) Are not provided by other lenders in the area; or
  - (2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);
- (f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or
- (g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

**§ 1805.302 Restrictions on use of assistance.**

- (a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the

eligible activities approved by the Fund and described in the Assistance Agreement.

- (b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

- (c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

**§ 1805.303 Technical assistance.**

- (a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

- (b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

- (c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.601.

- (d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the competitive review criteria in subpart G of this part, except as otherwise may be provided in the applicable NOFA. In addition, the requirements for matching funds are

## Community Development Financial Institutions Fund

## § 1805.500

not applicable to technical assistance requests.

### Subpart D—Investment Instruments

#### § 1805.400 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

#### § 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make non-voting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

#### § 1805.402 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than \$5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Tar-

geted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of \$3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

#### § 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

### Subpart E—Matching Funds Requirements

#### § 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal

## **§ 1805.501**

government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

### **§ 1805.501 Comparability of form and value.**

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in §1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

### **§ 1805.502 Severe constraints waiver.**

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than \$100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than \$25,000 in assistance.

## **12 CFR Ch. XVIII (1–1–02 Edition)**

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a “severe constraints waiver” as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a “severe constraints waiver” only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

### **§ 1805.503 Time frame for raising match.**

Applicants shall satisfy matching funds requirements within the period set forth in the applicable NOFA.

### **§ 1805.504 Retained earnings.**

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to §1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant’s most recent fiscal year (e.g., retained earnings at the end of fiscal year 1999 less retained earnings at the end of fiscal year 1998); or

## Community Development Financial Institutions Fund

## § 1805.600

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than a Credit Union), retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an insured credit union Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire retained earnings that have been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, retained earnings shall be comprised of "Regular Reserves", "Other Reserves" (excluding reserves specifically dedicated for losses), and "Undivided Earnings" as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings may be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is at least equal to four times the amount of retained earnings that is committed as matching funds; and

(B) Such increase be achieved within 24 months from September 30 of the calendar year in which the applicable application deadline falls;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares;

(iii) The level from which the increases in shares described in paragraph (d)(4)(i) of this section will be measured will be as of September 30 of the calendar year in which the applicable application deadline falls; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

### Subpart F—Applications for Assistance

#### § 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the regulations in this subpart and the applicable NOFA published in the FEDERAL REGISTER. The NOFA will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and

restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

**§ 1805.601 Application contents.**

An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. Unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet including the items specified in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(1) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in §1805.201 (b)(1) and (2) and paragraphs (d)(2) and (d)(9)(v) of this section) and financial statements (as described in paragraph (d)(4) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in §1805.201 (b)(1) and (2) and paragraphs (d)(2) and (d)(9)(vi) of this section) and financial statements (as described in paragraph (d)(4) of this section) for each full fiscal year since its inception; or

(3) For less than one year, shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan shall demonstrate that the Applicant shall have the capacity to operate as a CDFI upon receiving financial assistance from the Fund pursuant to this part.

(1) *Executive summary.* The executive summary shall include a description of the institution, products and services, markets served or to be served, accomplishments to date and key points of the Applicant's five year strategy, and other pertinent information.

(2) *Community development track record.* The Applicant shall describe its community development impact over the past three years, or for its period of operation if less than three years. In addition, an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall describe its activities, operations and community benefits created for residents of the Investment Area(s) or Targeted Population(s) for such periods as described in paragraph (c) of this section.

(3) *Operational capacity and risk mitigation strategies.* An Applicant shall submit information on its policies and procedures for underwriting and approving loans and investments, monitoring its portfolio and internal controls and operations. An Applicant shall also submit a copy of its conflict of interest policies that are consistent with the requirements of §1805.806.

(4) *Financial track record and strength.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. An Applicant shall submit:

(i) Audited financial statements;

(ii) Financial statements that have been reviewed by a certified public accountant; or

(iii) Financial statements that have been reviewed by the Applicant's Appropriate Federal Banking Agency. Such statements should include balance sheets or statements of financial position, income and expense statements or statements of activities, and cash flow statements. The Applicant

## Community Development Financial Institutions Fund

## § 1805.601

shall also provide information necessary to assess trends in financial and operating performance.

(5) *Capacity, skills and experience of the management team.* An Applicant shall provide information on the background and capacity of its management team, including key personnel and governing board members. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(6) *Market analysis.* An Applicant shall provide an analysis of its Target Market, including a description of the Target Market, and the extent of economic distress, an analysis of the needs of the Target Market for Financial Products, Financial Services and Development Services, and an analysis of the extent of demand within such Target Market for the Applicant's products and services. The Applicant also shall provide an assessment of any factors or trends that may affect the Applicant's ability to deliver its products and services within its Target Market.

(7) *Program design and implementation plan.* An Applicant shall:

(i) Describe the products and services it proposes to provide and analyze the competitiveness of such products and services in the Target Market;

(ii) Describe its strategy for delivering its products and services to its Target Market;

(iii) Describe how its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s);

(iv) Describe its plan to coordinate use of assistance from the Fund with existing government assistance programs and private sector resources;

(v) Describe how it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide Equity Investments, loans, secondary markets, or other services in the Target Market; and

(vi) Discuss the extent of community support (if any) within the Target Market for its activities.

(8) *Financial projections and resources.* An Applicant shall provide:

(i) *Financial projections.* (A) Projections for each of the next five years which include pro forma balance sheets or statements of financial position, income and expense statements or statements of activities, and a description of any assumptions that underlie its projections; and

(B) Information to demonstrate that it has a plan for achieving or maintaining sustainability within the five-year period;

(ii) *Matching funds.* (A) A detailed description of its plans for raising matching funds, including funds previously obtained or legally committed to match the amount of financial assistance requested from the Fund; and

(B) An indication of the extent to which such matching funds will be derived from private, nongovernment sources. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, if applicable, the extent to which, and for what purpose, such matching funds have been used to date, and terms and restrictions on use for each matching source, including any restriction that might reasonably be construed as a limitation on the ability of the Applicant to use the funds for matching purposes; and

(iii) *Severe constraints waiver.* If the Applicant is requesting a "severe constraints waiver" of any matching requirements, it shall submit the information requested in § 1805.502.

(9) *Projected community impact.* An Applicant shall provide:

(i) Estimates of the volume of new activity to be achieved within its Target Market assuming that assistance is provided by the Fund;

(ii) A description of the anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds within the Target Market;

(iii) An estimate of the benefits expected to be created within its Target Market over the next five years;

(iv) The extent to which the Applicant will concentrate its activities within its Target Market;



## § 1805.700

(v) A description of how the Applicant will measure the benefits created as a result of its activities within its Target Market; and

(vi) In the case of an Applicant with a prior history of serving a Target Market, an explanation of how the Applicant will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an application with a Community Partner, the Applicant shall:

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.701(b)(6);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart G of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(13) *Effective use of Fund resources.* An Applicant shall describe the extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Mar-

## 12 CFR Ch. XVIII (1–1–02 Edition)

ket and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan.

(e) *Community ownership and governance.* An Applicant shall provide information to demonstrate the extent to which the Applicant is, or will be, Community-Owned or Community-Governed.

(f) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(g) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.807; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

### Subpart G—Evaluation and Selection of Applications

#### § 1805.700 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s) and/or site visit(s), that is intended to:

(a) Ensure that Applicants are evaluated on a competitive basis in a fair and consistent manner;

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact; and

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

**§ 1805.701 Evaluation of applications.**

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (*e.g.*, in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Solid understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Quality program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Part-

ner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan. In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, and

## § 1805.800

whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities;

(10) The Fund may consider any other factors, as it deems appropriate, in reviewing an application.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

### Subpart H—Terms and Conditions of Assistance

#### § 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

#### § 1805.801 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Commu-

## 12 CFR Ch. XVIII (1–1–02 Edition)

nity Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardees application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance

## Community Development Financial Institutions Fund

## § 1805.803

Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

### § 1805.802 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursement of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

### § 1805.803 Data collection and reporting.

(a) *Data—general.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such

forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable).

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement.

(2) An Awardee shall submit within 60 days after the end of each semi-annual period, or within some other period as may be agreed to in the Assistance Agreement, internal financial statements covering the semi-annual reporting period (*i.e.*, two periods per year) and information on its compliance with its financial soundness covenants.

(3) An Awardee shall submit a report within 60 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following:

(i) A narrative description of an Awardee's activities in support of its Comprehensive Business Plan;

(ii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(iii) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement; and certification that an Awardee continues to meet the eligibility requirements described in § 1805.200.

(4) An Awardee shall submit within 120 days after the end of its fiscal year, or within some other period as may be agreed to in the Assistance Agreement, fiscal year end statements of financial condition audited by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Office Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), as applicable.

(5) An Awardee shall submit a report within 120 days after the end of its fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement containing, unless otherwise determined by mutual agreement between the Awardee and the Fund, the following information:

(i) The Awardee's customer profile;

(ii) Awardee activities including Financial Products and Development Services;

(iii) Awardee portfolio quality;

(iv) The Awardee's financial condition; and

(v) The Awardee's community development impact.

(6) The Fund shall make reports described in paragraph (e)(2) and (e)(3) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of

## Community Development Financial Institutions Fund

## § 1805.805

an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institutions implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking

Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (<http://www.whitehouse.gov/OMB/grants/index.html>); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

### § 1805.804 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

### § 1805.805 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

## § 1805.806

### § 1805.806 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

### § 1805.807 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension,

continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

### § 1805.808 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and Insiders.

### § 1805.809 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

### § 1805.810 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

### § 1805.811 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

## PART 1806—BANK ENTERPRISE AWARD PROGRAM

### Subpart A—General Provisions

Sec.

1806.100 Purpose.

1806.101 Summary.

1806.102 Relationship to the Community Development Financial Institutions Program.

1806.103 Definitions.

1806.104 Waiver authority.

1806.105 OMB control number.

### Subpart B—Awards

1806.200 Community eligibility and designation.

1806.201 Qualified Activities.

## Community Development Financial Institutions Fund

## § 1806.103

- 1806.202 Measuring activities.
- 1806.203 Estimated award amounts.
- 1806.204 Selection process.
- 1806.205 Actual award amounts.
- 1806.206 Applications for Bank Enterprise Awards.

### Subpart C—Terms and Conditions of Assistance.

- 1806.300 Award Agreement; sanctions.
- 1806.301 Records, reports and audits of Awardees.
- 1806.302 Compliance with government requirements.
- 1806.303 Fraud, waste and abuse.
- 1806.304 Books of account, records and government access.
- 1806.305 Retention of records.

AUTHORITY: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

SOURCE: 62 FR 64442, Dec. 5, 1997, unless otherwise noted.

### Subpart A—General Provisions

#### § 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to encourage insured depository institutions to make Equity Investments and carry out CDFI Support Activities and Development and Service Activities to revitalize distressed urban and rural communities.

#### § 1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

- (1) Invest in or otherwise support Community Development Financial Institutions;
- (2) Increase lending and investment activities within Distressed Communities; or
- (3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

#### § 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or

(3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and CDFI Support Activities (except technical assistance) provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

#### § 1806.103 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Agricultural Loan* means an origination of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;



(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(h) *Bank Enterprise Award* means an award made to an Applicant pursuant to this part;

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means an origination of a loan (other than a Multi-Family Loan or a Single Family Loan) used for commercial purposes to finance construction and land development or an origination of a loan that is secured by real estate and used to finance the acquisition or rehabilitation of a building used for commercial purposes;

(m) *Community Development Financial Institution* (or CDFI) means an entity whose certification as a CDFI under § 1805.201 of this chapter is in effect as of the end of the applicable Assessment Period (the Assessment Period in which the Qualified Activity takes place) and that meets the requirements of § 1805.200(b) through (h) of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (m). If an Applicant is proposing to make an Equity Investment or engage in CDFI Support Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.701(b) of this chapter. In order for the Applicant to be eligible to receive an award for its activity, the required information with respect to the uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA published in the FEDERAL REGISTER, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding any-

thing in this paragraph (m) to the contrary, an Applicant may receive an award pursuant to this part for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the requirements of § 1805.200(b) through (h) of this chapter if:

(1) The Applicant requires the uncertified CDFI to refrain from using the assistance provided until the entity is certified;

(2) The uncertified CDFI is certified by the end of the applicable Assessment Period; and

(3) The Applicant retains the option of recapturing said assistance in the event that the uncertified CDFI is not certified by the end of the applicable Assessment Period;

(n) *CDFI Related Activities* means Equity Investments and CDFI Support Activities;

(o) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that is integrally involved in a Distressed Community in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(p) *Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of technical assistance to Residents in managing their personal finances through consumer education programs;

(2) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community;

(3) Provision of technical assistance to, or servicing the loans of, Low- or Moderate-Income homeowners and homeowners located in the Distressed Community; and

(4) Other services provided for Low- and Moderate-Income persons in a Distressed Community or enterprises integrally involved in a Distressed Community deemed appropriate by the Fund;

## Community Development Financial Institutions Fund

## § 1806.103

(q) *Consumer Loan* means an origination of a loan to one or more individuals for household, family, or other personal expenditures;

(r) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(s) *Development and Service Activities* means activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(t) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an Equity Investment by the Fund;

(u) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other comparable services as may be specified by the Fund that are provided to Low- and Moderate-Income persons in the Distressed Community or enterprises integrally involved with the Distressed Community;

(v) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) of the Act (12 U.S.C. 4703(a));

(w) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund;

(x) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain In-

dian allotments, and former Indian Reservations in the State of Oklahoma;

(y) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(z) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended;

(aa) *Multi-Family Loan* means an origination of a loan secured by a five- or more family residential property;

(bb) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is integrally involved with a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, related to commercial real estate, single family housing, multi-family housing, business or agriculture (as defined in this part);

(cc) *Qualified Activities* means CDFI Related Activities and Development and Service Activities;

(dd) *Resident* means an individual domiciled in a Distressed Community;

(ee) *Single Family Loan* means an origination of a loan secured by a one-to-four family residential property;

(ff) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation; and

(gg) *Unit of General Local Government* means any city, county town, township, parish, village or other general purpose political subdivision of a State

## § 1806.104

or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

### § 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the FEDERAL REGISTER.

### § 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505-0153.

## Subpart B—Awards

### § 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out CDFI Support Activities or Development and Service Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is integrally involved with such a Distressed Community. In the case of an Applicant proposing to make an Equity Investment, the Fund reserves the right to request information on Distressed Communities served by such a CDFI should such information be deemed necessary by the Fund to complete the selection process described in § 1806.204. In the case of an Applicant that proposes to carry out both CDFI Support Activities and Development and Service Activities it may designate different Distressed Communities for these two categories of activity.

(b) *Minimum area eligibility requirements.* A Distressed Community must

## 12 CFR Ch. XVIII (1-1-02 Edition)

meet the minimum area eligibility requirements contained in this paragraph (b).

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii) (A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) The area is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as published by the U.S. Bureau of the Census in the 1990 decennial census; and

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method. U.S. Bureau of Labor Statistics data and information necessary for Census Share calculations may be obtained from the Fund.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* Upon request, the Fund will provide a prospective Applicant with data

## Community Development Financial Institutions Fund

## § 1806.202

and other information to help it identify areas eligible to be a Distressed Community. A prospective Applicant is encouraged to contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

### § 1806.201 Qualified Activities.

(a) *CDFI Related Activities.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment or carrying out CDFI Support Activities during an Assessment Period.

(b) *Development and Service Activities.* (1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Development and Service Activities during an Assessment Period.

(2) *Area served.* The Development and Service Activities listed in paragraphs (b)(4)(i) through (x) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low- and Moderate-Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Development and Service Activity is assigned a priority factor. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity.

(4) *Development and Service Activities.* Development and Service Activities are listed in this paragraph with their corresponding priority factors:

(i) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor = 1.0);

(ii) Financial Services (priority factor = 1.2);

(iii) Community Services (priority factor = 1.4);

(iv) Consumer Loans (priority factor = 1.2);

(v) Single Family Loans and related Project Investments (priority factor = 1.4);

(vi) Multi-Family Loans and related Project Investments (priority factor = 1.6);

(vii) Commercial Real Estate Loans and related Project Investments (priority factor = 1.6);

(viii) Business Loans, Agricultural Loans, and related Project Investments of \$100,000 or less (priority factor = 1.9);

(ix) Business Loans, Agricultural Loans, and related Project Investments of more than \$100,000 through \$250,000 (priority factor = 1.8); and

(x) Business Loans and related Project Investments of more than \$250,000 through \$1,000,000 and Agricultural Loans and related Project Investments of more than \$250,000 through \$500,000 (priority factor = 1.7).

(c) *Limitation.* Financial assistance provided by an Applicant for which the Applicant receives benefits through the Low Income Housing Tax Credit authorized pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award.

### § 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. If an Applicant is seeking assistance only for CDFI Related Activities, it should only report its activities for CDFI Related Activities categories. If an Applicant is seeking assistance only for Development and Service Activities, it should only report its activities for Development and Service Activities categories. If an Applicant is seeking assistance for both CDFI Related Activities and Development and Service Activities, it should report its activities for both types of categories. If an Applicant is unable to report its activities in the aforementioned manner, the Applicant

## § 1806.203

shall provide an explanation satisfactory to the Fund as to why it cannot report required information and simultaneously submit to the Fund a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in a NOFA for each funding round.

(b) *Exception.* An Applicant may select not to report its deposit liabilities as described in § 1806.201(b)(4)(i). In such a case, an Applicant's deposit liabilities will not be considered in calculating the service score pursuant to § 1806.203(c).

(c) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans, grants and deposits described in § 1806.103 at the original amount of such investments, loans, grants or deposits. Where a loan matures, is fully paid and is then renewed, the Fund will assess the value of the principal amount of the renewed loan. Where a deposit, such as a certificate of deposit, matures and is then rolled over, the Fund will assess the value of the full amount of the rolled over deposit. However, where an existing loan is refinanced, the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Deposit liabilities at the face dollar amount of monies deposited as measured by comparing the net change in the amount of applicable funds (as described in § 1806.201(b)(4)(i)) on deposit at the Applicant institution during the period described in this paragraph (c)(2). An Applicant shall measure the net changes in deposit liabilities during:

(i) The Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assess-

ment Period and at the close of business on the last day of the Assessment Period;

(3) Financial Services, Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services; and

(4) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant.

(d) *Closed transactions.* A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if:

(1) The documentation evidencing the transaction:

(i) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively, as specified in the applicable NOFA; and

(ii) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(2) An initial disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction, (both as determined by the Fund).

(e) *Reporting.* An Applicant shall report Qualified Activities on the basis of transactions that were:

(1) Completed during the Baseline Period; and

(2) Are expected to be completed during the Assessment Period and disbursed by the Applicant to a borrower or investee within the period described in § 1806.205(a).

## § 1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment will be equal to 15 percent (or

## Community Development Financial Institutions Fund

## § 1806.204

such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment between the Baseline Period and Assessment Period.

(b) *CDFI Support Activities.* If an Applicant is not a CDFI, the estimated award amount for CDFI Support Activities will be equal to 11 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period. If Applicant is a CDFI, the estimated award amount for CDFI Support Activities will be equal to 33 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period.

(c) *Development and Service Activities.* The estimated award amount for Development and Service Activities will be calculated as follows:

(1) *Step 1.* For each type of Development and Service Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Development and Service Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities, Financial Services and Community Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Development and Service Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score;

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:

(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

### § 1806.204 Selection process.

(a) *Availability of funds.* All awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient for all estimated award amounts, an Applicant that meets all of the program requirements specified in this part shall receive an award that is calculated in the manner specified in § 1806.205. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories—(1) General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the priority categories described in this paragraph (b). All Applicants in the first priority category will be selected as Awardees before Applicants in the second priority category. Selections within each priority category will be based on the relative rankings within each such category, subject to the availability of funds.

(2) *First priority.* (i) If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities in the following order:

(A) Equity Investments in CDFIs serving Distressed Communities;

(B) Equity Investments in CDFIs not serving Distressed Communities; and

(C) CDFI Support Activities.

(ii) *Ranking Equity Investments.* Estimated awards for Equity Investments may be ranked within each applicable priority subcategory based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). The Applicant, however, may not reduce its award percentage below 12 percent. For Applicants that propose the same percentage, estimated awards

## § 1806.205

will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(iii) *Ranking CDFI Support Activities.* Estimated awards for CDFI Support Activities may be ranked based on the ratio of the proposed CDFI Support Activity to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(3) *Second priority.* (i) If the amount of funds available during a funding round is sufficient for all CDFI Related Activities but insufficient for all estimated award amounts, second priority will go to Applicants that propose to engage in Development and Service Activities.

(ii) *Ranking Development and Service Activities.* Estimated awards for Development and Service Activities may be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

(4) *Combined awards.* If an Applicant receives an award for more than one priority category described in this section, the award amounts will be combined into a single Bank Enterprise Award.

### § 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period and expected to be disbursed to an investee, borrower, or other recipient within three years of the end of the applicable Assessment Period. The Fund reserves the right to extend this period on a case-by-case basis where it has a high degree of confidence that disbursement

## 12 CFR Ch. XVIII (1-1-02 Edition)

will occur and the activity will promote the purposes of the Act. Subject to § 1806.204 and any recapture sanction for failure to perform pursuant to this part, the actual award amount that an Awardee will receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Achievement.* If an Applicant carries out all or a portion of its projected Qualified Activities and satisfies all program requirements described in this part, its award amount will be calculated on a pro-rata basis to reflect the increase in activities actually carried out except that if:

(1) The amount of funds available is insufficient for all estimated award amounts; and

(2) An Applicant carries out less than 75 percent of its projected Qualified Activities, the Fund in its sole discretion, may limit the amount or deny an award.

(c) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) Using the calculation and selection process contained in this part:

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or

(ii) To select Applicants not previously selected;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(d) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason, including if an Applicant submits an application based on unrealistic Assessment Period projections.

### § 1806.206 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the FEDERAL REGISTER. The NOFA will advise potential Applicants with respect to obtaining an application packet and will establish submission deadlines. The NOFA also will establish any other

## Community Development Financial Institutions Fund

## § 1806.300

requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which includes:

(1) A copy of the Applicant's certificate of insurance issued by the Federal Deposit Insurance Corporation and a copy of the Applicant's incorporation, charter, organizing, formation, or otherwise establishing documents to be used to establish eligibility for an award;

(2) A completed Bank Enterprise Award Rating and Calculations worksheet. (If an Applicant intends to complete a merger with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that represents the projected activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed.);

(3) A narrative summary of each Qualified Activity expected to be performed in the Assessment Period;

(4) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report, to its Appropriate Federal Banking Agency;

(5) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(6) Certifications that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(7) A copy of the Applicant's most recent annual report;

(8) In the case of an Applicant proposing to engage in Development and Service Activities, a completed Distressed Community Designation work-

sheet and a map and narrative description of the Distressed Community;

(9) In the case of an Applicant proposing to engage in CDFI Related Activities:

(i) *Equity Investment.* An Applicant shall submit a list of potential CDFIs to which assistance may be provided, and a description of the amount, terms and conditions of any Equity Investment that may be provided.

(ii) *CDFI Support Activities.* An Applicant shall submit:

(A) A list of potential CDFIs to which assistance may be provided and a description of the amount, terms and conditions of the assistance that may be provided; and

(B) Information that indicates that each CDFI to which an Applicant proposes to provide CDFI Support Activities is integrally involved within a Distressed Community, a completed Distressed Community Designation worksheet, and a map and narrative description of the Distressed Community.

### Subpart C—Terms and Conditions of Assistance

#### § 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or non-compliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the award and pursue any other available legal remedies.

(c) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund will, to



## § 1806.301

the maximum extent practicable, provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, will provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

## § 1806.301 Records, reports and audits of Awardees.

At the end of an Assessment Period, each Applicant shall submit to the Fund:

(a) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(b) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period; and

(c) *Documentation.* The Applicant shall make available the following:

(1) With respect to Equity Investments and CDFI Support Activities, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(2) With respect to Development and Services Activities where the original amount of the value of the activity is \$250,000 or greater, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(3) With respect to Development and Services Activities where the original amount of the value of the activity is less than \$250,000, the Applicant shall submit a schedule that describes the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument; and

(4) Any other information reasonably requested by the Fund in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

## § 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

## 12 CFR Ch. XVIII (1–1–02 Edition)

## § 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

## § 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

## § 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

## PART 1815—ENVIRONMENTAL QUALITY

Sec.	
1815.100	Policy.
1815.101	Purpose.
1815.102	Definitions.
1815.103	Designation of responsible Fund official.
1815.104	Specific responsibilities of the designated Fund official.
1815.105	Major decision points.
1815.106	Supplemental environmental review.
1815.107	Determination of review requirement.
1815.108	Actions that normally require an EIS.
1815.109	Preparation of an EIS.
1815.110	Categorical exclusion.

## Community Development Financial Institutions Fund

## § 1815.104

- 1815.111 Actions that require an environmental assessment.
- 1815.112 Preparation of an environmental assessment.
- 1815.113 Public involvement.
- 1815.114 Fund decisionmaking procedures.
- 1815.115 OMB control number.

AUTHORITY: 12 U.S.C. 4703, 4717; 42 U.S.C. 4332; Chapter X, Pub L. 104-19, 109 Stat. 237 (12 U.S.C. 4703 note).

SOURCE: 60 FR 54130, Oct. 19, 1995, unless otherwise noted.

### § 1815.100 Policy.

The Community Development Financial Institution Fund's policy is to ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Fund and to reduce any possible adverse effects of Fund decisions and actions upon the quality of the human environment.

### § 1815.101 Purpose.

This part supplements Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended, and describe how the Community Development Financial Institutions Fund intends to consider environmental factors and concerns in the Fund's decisionmaking process. This part applies only to the Fund and not to any other bureau, office or organization within the Department of the Treasury.

### § 1815.102 Definitions.

- (a) For the purpose of this part:
  - (1) *Act* means the Community Development Banking and Financial Institutions Act (12 U.S.C. 4701 et seq.);
  - (2) *Application* means a request for assistance from the Fund submitted pursuant to parts 1805 or 1806 of this chapter;
  - (3) *CEQ regulations* means the regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 as promulgated by the Council on Environmental Quality, Executive Office of the President, appearing at 40 CFR parts 1500-1508 and to which this part is a supplement;
  - (4) *Comprehensive Business Plan* means a document submitted as part of an Ap-

plication pursuant to part 1805 of this chapter which describes an organization's proposed process for offering products or services to a particular market, including organizational requirements needed to serve that market effectively;

(5) *Consumer Loans* means loans to one or more individuals for household, family or other personal expenditures;

(6) *Decisionmaker* means the Director of the Fund, unless an appropriate delegation of authority has been made;

(7) *EIS* means an environmental impact statement as defined in 40 CFR 1508.11 of the CEQ regulations;

(8) *Fund* means the Community Development Financial Institutions Fund, established under section 104(a) of the Act (12 U.S.C. 4703(a));

(9) *NEPA* means the National Environmental Policy Act, as amended, 42 U.S.C. 4321-4335; and

(10) *Project* means all closely related actions relating to a specific site.

(b) Other terms used in this part are defined in 40 CFR part 1508 of the CEQ regulations.

### § 1815.103 Designation of responsible Fund official.

The Director of the Fund is the designated Fund official responsible for implementation and operation of the Fund's policies and procedures on environmental quality and control.

### § 1815.104 Specific responsibilities of the designated Fund official.

The designated Fund official shall:

- (a) Coordinate the formulation and revision of Fund policies and procedures on matters pertaining to environmental quality and control;
- (b) Establish and maintain working relationships with relevant government agencies (including Federal, state and local) concerned with environmental matters;
- (c) Develop procedures within the Fund's planning and decisionmaking processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part;
- (d) Develop, monitor, and review the Fund's implementation of standards, procedures, and working relationships

for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(e) Monitor processes to ensure that the Fund's procedures regarding consideration of environmental quality are achieving their intended purposes;

(f) Advise the officers and employees of the Fund of technical and management requirements of environmental analysis, of appropriate expertise available, and, with the assistance of the Department of the Treasury's Office of the General Counsel, of relevant legal developments;

(g) Monitor the consideration and documentation of the environmental aspects of Fund planning and decision-making processes by appropriate officers and employees of the Fund;

(h) Ensure that all environmental assessments and, where required, all EISs are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Fund;

(i) Ensure that, as required, a legislative EIS is submitted with all proposed legislation;

(j) Consolidate and transmit to appropriate parties the Fund's comments on EISs and other environmental reports prepared by other agencies;

(k) Acquire information and prepare appropriate reports on environmental matters required of the Fund; and

(l) Coordinate the Fund's efforts to make available to other parties information and advice on the Fund's policies for protecting and enhancing the quality of the environment.

**§ 1815.105 Major decision points.**

(a) The possible environmental effects of an Application, including any Comprehensive Business Plan, must be considered along with technical, economic, and other factors throughout the decisionmaking process. For most Fund actions there are two distinct stages in the decisionmaking process:

(1) Preliminary approval stage, at which point applications are selected for funding; and

(2) Final approval and funding stage.

(b) Environmental review shall be integrated into the decisionmaking process of the Fund as follows:

(1) During the preliminary approval stage, the designated Fund official shall determine whether the Application proposes actions which are categorically excluded, or normally require an environmental assessment or an EIS;

(2) If the designated Fund official determines that the Application proposes actions which normally require an environmental assessment or an EIS, the applicant shall be informed that the final approval and funding, in addition to any other conditions, is contingent upon:

(i) The applicant supplying to the Fund all information necessary for the Fund to perform or have performed any environmental review required by this part;

(ii) The applicant not using any Fund financial assistance to perform any of such proposed actions in the Application that affect the physical environment until Fund approval is received; and

(iii) The outcome of the environmental review required by this part;

(3) The Fund will perform or have performed the environmental reviews required by this part;

(4) A preliminary approval of an Application may be withdrawn or further conditions may be imposed based upon the outcome of an environmental review required by this part; and

(5) If the designated Fund official determines that the Application proposes actions that require an environmental assessment or an EIS, the environmental assessment and/or EIS must be completed and circulated prior to the use of Federal funds for any activity that triggers the need for an environmental assessment and/or EIS.

**§ 1815.106 Supplemental environmental review.**

(a) The designated Fund official shall determine whether the proposed actions in the Application are sufficiently definite to perform a meaningful environmental review during the preliminary approval stage.

(b) If the designated Fund official determines that the Application is sufficiently definite to perform a meaningful environmental review during the

## Community Development Financial Institutions Fund

## § 1815.110

preliminary approval stage, no conditions for supplemental environmental review shall be imposed.

(c) If the designated Fund official determines that the Application, or any part of the Application, is not sufficiently definite to complete a meaningful environmental review during the preliminary approval stage, the Fund shall require a supplemental environmental review prior to the taking of any action directly using Fund financial assistance that is not categorically excluded from environmental review or for which an environmental assessment or EIS has not been approved by the Fund. The applicant shall notify the designated Fund official when proposing any action requiring a supplemental environmental review and shall supply to the Fund all information necessary for the Fund to perform the supplemental environmental review. The Fund shall perform or have performed such a supplemental environmental review. The applicant shall not use any Fund financial assistance to perform any of the proposed actions requiring a supplemental environmental review that affect the physical environment until Fund approval for such action is received.

### § 1815.107 Determination of review requirement.

In deciding whether to prepare an EIS, the designated Fund official shall determine whether the proposal is one that normally:

- (a) Requires an EIS;
- (b) Requires an environmental assessment, but not necessarily an EIS; or
- (c) Does not require either an EIS or an environmental assessment (categorical exclusion).

### § 1815.108 Actions that normally require an EIS.

(a) If necessary, the Fund shall perform or have performed an environmental assessment to determine if an Application, or any portion of an Application, requires an EIS. However, it may be readily apparent that a proposed action in an Application will have a significant impact on the environment; in such cases, an environmental assessment is not required and

the Fund shall immediately begin to prepare, or have prepared, an EIS.

(b) An EIS normally is required where an Application proposes to directly use financial assistance from the Fund for any Project that would:

(1) Remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units, or would result in the construction or installation of 2,500 or more new housing units, or which would provide sites for 2,500 or more new housing units; or

(2) Remove, demolish, convert, or substantially rehabilitate 1,500,000 square feet or more of commercial space, or would result in the construction or installation of 1,500,000 square feet or more of new commercial space, or which would provide sites for 1,500,000 square feet or more of new commercial space.

### § 1815.109 Preparation of an EIS.

(a) If the Fund determines that an EIS should be prepared, it shall publish a notice of intent in the FEDERAL REGISTER in accordance with 40 CFR 1501.7 and 1508.22 of the CEQ regulations. After publishing the notice of intent, the Fund shall begin to prepare or have prepared the EIS. Procedures for preparing the EIS are set forth in 40 CFR part 1502 of the CEQ regulations.

(b) The Fund may supplement a draft or final EIS at any time. The Fund shall prepare or have prepared a supplement to either the draft or final EIS when:

(1) Substantial changes are proposed to an action contained in the draft or final EIS that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or

(2) Actions are proposed which relate or are similar to other action(s) taken or proposed and that together have a cumulatively significant impact on the environment.

### § 1815.110 Categorical exclusion.

The CEQ regulations provide for the categorical exclusion of actions that do not individually or cumulatively have

## § 1815.110

## 12 CFR Ch. XVIII (1–1–02 Edition)

a significant effect on the human environment (40 CFR 1508.4). Therefore, neither an environmental assessment nor an EIS is required for such actions. An action which falls into one of the categories below may still require the preparation of an EIS or environmental assessment if the designated Fund official determines it meets the criteria stated in § 1815.109 or involves extraordinary circumstances that may have a significant environmental effect. The Fund has determined the following categorical exclusions:

(a) Actions directly related to the administration or operation of the Fund (e.g. personnel actions, including, but not limited to, staff recruitment and training; purchase of goods and services for the Fund, including, but not limited to, furnishings, equipment, supplies and services; space acquisition; property management; and security);

(b) Actions directly related to and implementing proposals for which an environmental assessment or an environmental assessment and EIS have been prepared;

(c) Actions directly related to the granting or receipt of Bank Enterprise Act awards pursuant to part 1806 of this chapter;

(d) Actions directly related to training and/or technical assistance;

(e) Projects for the acquisition, disposition, rehabilitation and/or modernization of 500 existing housing units or less when all the following conditions are met:

(1) Unit density is not increased more than 20 percent;

(2) The Project does not involve changes in land use from nonresidential to residential;

(3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(4) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(f) Projects for the construction of 200 housing units or less when all the following conditions are met:

(1) The Project does not involve changes in existing land use from nonresidential to residential; and

(2) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(g) Projects for the acquisition, disposition, rehabilitation and/or modernization of 200,000 square feet or less of existing commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential;

(2) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(3) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

(h) Projects for the construction of 100,000 square feet or less of commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential; and

(2) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

(i) Projects for the acquisition of an existing structure, provided that the property to be acquired is in place and will be retained in the same use;

(j) Projects involving Fund financial assistance of \$1,000,000 or less;

(k) Actions directly related to the provision of residential tenant-based rental assistance, Consumer Loans, health care, child care, educational, cultural and/or social services;

(l) Actions involving Fund financial assistance that is used to increase the permanent capital and/or liquidity of an applicant;

(m) Actions where no use of Federal funds is involved in the activity or Project; and

(n) Actions directly related to the provision of working capital, the acquisition of machinery and equipment or the purchase of inventory, raw materials or supplies.

## Community Development Financial Institutions Fund

## § 1815.114

### § 1815.111 Actions that require an environmental assessment.

If a Project or action is not one that normally requires an EIS and does not qualify for categorical exclusion, the Fund shall prepare, or have prepared, an environmental assessment.

### § 1815.112 Preparation of an environmental assessment.

(a) The Fund shall begin the preparation of an environmental assessment as early as possible after the designated Fund official has determined that it is required. The Fund may prepare an environmental assessment at any time to assist planning and decisionmaking.

(b) An environmental assessment is a concise public document used to determine whether to prepare an EIS. An environmental assessment aids in complying with the NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary. The environmental assessment shall contain brief discussions of the following topics:

- (1) Purpose and need for the proposed action;
- (2) Description of the proposed action;
- (3) Alternatives considered, including the no action alternative;
- (4) Environmental effects of the proposed action and alternative actions; and
- (5) Listing of agencies, organizations or persons consulted.

(c) The most important or significant environmental consequences and effects on the areas listed below should be addressed in the environmental assessment. Only those areas which are specifically relevant to the particular proposal should be addressed. Those areas should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

- (1) Natural/ecological features (such as floodplain, wetlands, coastal zones, wildlife refuges, and endangered species);
- (2) Air quality;
- (3) Sound levels;
- (4) Water supply, wastewater treatment and water runoff;

(5) Energy requirements and conservation;

- (6) Solid waste;
- (7) Transportation;
- (8) Community facilities and services;
- (9) Social and economic;
- (10) Historic and aesthetic; and
- (11) Other relevant factors.

(d) If the Fund completes an environmental assessment and determines that an EIS is not required, then the Fund shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by the Fund as specified in 40 CFR 1506.6 of the CEQ regulations.

### § 1815.113 Public involvement.

All information collected by the Fund pursuant to this part shall be available to the public consistent with the CEQ regulations. Interested persons may obtain information concerning any pending EIS or any other element of the environmental review process of the Fund by contacting the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., room 5116, Washington, DC 20220, or such other contact entity designated by the Fund.

### § 1815.114 Fund decisionmaking procedures.

To ensure that at major decision-making points all relevant environmental concerns are considered by the Decisionmaker, the following procedures are established:

(a) An environmental document, i.e., the EIS, environmental assessment, finding of no significant impact, or notice of intent, in addition to being prepared at the earliest point in the decisionmaking process, shall accompany the relevant proposal or action through the Fund's decisionmaking process to ensure adequate consideration of environmental factors;

(b) The Decisionmaker shall consider in its decisionmaking process only those alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decisionmaker shall consider all comments received during any comment process and all alternatives described

**§ 1815.115**

in the EIS. A written record of the consideration of alternatives during the decisionmaking process shall be maintained; and

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Fund.

**12 CFR Ch. XVIII (1–1–02 Edition)**

**§ 1815.115 OMB control number.**

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153 (expires September 30, 1998).